State income and franchise tax quarterly update

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To our readers:

The following provides a summary of the significant legislative, administrative and judicial actions that affected state and local income/ franchise taxes during the fourth quarter of 2015.

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Key developments

Connecticut revises its new combined reporting rules, adopts a single sales factor apportionment formula

On 29 December 2015, Governor Dannel Malloy signed SB 1601, which makes additional changes to the mandatory combined reporting provisions enacted earlier in the year and to certain provisions of Connecticut's corporate and personal income tax statutes. Key provisions of the bill include:

- Adoption of a single receipts factor formula, effective for income years beginning on or after 1 January 2016 (note: this change only applies to the income tax base of the Connecticut corporate tax and does not apply to that tax's capital tax base to which an equally weighted three-factor formula will continue to apply).
- Elimination of the requirement that the combined group include a member that earns more than 20% of its gross income, directly or indirectly, from the sale or ownership of intangible property or service-related activities, the costs of which generally are deductible for federal income tax purposes against the income of other group members.
- Elimination of the requirement that the Tax Commissioner publish a list of tax haven jurisdictions and remove from the definition of tax haven any jurisdiction that has entered into a comprehensive income tax treaty with the United States. The bill appears to still except from the definition of a tax haven any corporation that was established in such a jurisdiction for a legitimate business purpose.
- That the tax calculated for a combined group on a unitary basis, prior to surtax and application of credits, cannot exceed the "nexus combined base tax" by more than $2.5 million.
- Modification of the net operation loss (NOL) elections available to certain combined groups.
- Expansion of the Connecticut tax law's reliance on the Internal Revenue Code and provision for applying the federal consolidated regulations to determinations of the taxable income of a combined reporting group.
- Increasing the cap on the total value of credits that a corporation can claim back to 70% over a four-year period beginning in 2016, but only with respect to the R&D credit, as well as credits related to urban and industrial site development projects.

The bill also adopts other changes to the combined reporting provisions related to the inclusion of foreign corporations in the combined group, the treatment of income derived from investment partnerships, the apportionment provisions for groups that include a multi-state financial services company and guidance on capital tax base eliminations.

Ernst & Young LLP's insights

The tax provisions contained in the bill were passed in large part because concerns publicly voiced by the Connecticut business community in connection with the earlier-enacted bill that imposed mandatory combined reporting in the state.

Even with these additional changes, given the state's continued bleak budget deficit projections and the fluid nature of the recent statutory changes, proposals for further tax reform measures in 2016 and future years seem likely.

Rhode Island Division of Taxation adopts regulations on apportionment and nexus

On 23 December 2015, the Rhode Island Division of Taxation issued final regulations on nexus for corporate income tax purpose (Regulation CT 15-02) and apportionment of net income (Regulation CT 15-04). These regulations take effect 12 January 2016.

Nexus: The amended nexus regulation provides more broad-based nexus guidance in addition to significant coverage of the applicability in Rhode Island of PL 86-272 under the new combined reporting regime. The old nexus regulation provided that corporate limited partners would not generally have nexus with the state solely due to their ownership of a limited partnership interest. The amended regulation, however, is much broader providing that ownership of an interest in any partnership or other pass-through entity whose activities, if conducted by a foreign corporation, will create tax nexus in Rhode Island unless the activities of the partnership or pass-through entity are limited to activities protected under PL 86-272.

The amended regulation makes clear that Rhode Island will apply economic nexus "to the fullest extent permitted by the United States Constitution."

The amended regulation also discusses the use of the "Finnigan" method of apportioning the sales of non-nexus members of the combined reporting group. The regulation provides that if one combined group member has nexus with Rhode Island, then the Rhode Island receipts of a combined group member that lacks nexus with Rhode Island or that is protected from Rhode Island taxation by PL 86-272 must always be included in the numerator of an apportionment fraction on the combined return.

Lastly, the amended regulation includes a list of 26 nexus-creating activities. Such activities include providing consulting services, providing services, installing or supervising the installation of tangible personal property at or after shipment or delivery, owning an in-state pass-through entity, licensing the use of non-trademark intangible property to in-state affiliates, entering into franchising or licensing agreements.

Apportionment: Rhode Island's new market sourcing regulation (Regulation CT 15-04) provides rules to determine the state or states of assignment of sales other than from sales of tangible personal property. In general, the new regulation provides that receipts from the lease or license of intangible property are sourced based on where the intangible property is used, while receipts from sales of services are sourced to where the "... benefit of the service is received." The regulation provides various rules depending on the type of service, the method of delivery and/or the type of customer. The regulation is modeled closely after the market sourcing regulation adopted by Massachusetts (830 CMR 63.38.1(9)). Similar to the Massachusetts regulation, the Rhode Island rule breaks down the sourcing of services into three broad categories – "in-person" services, "services delivered to the customer or on behalf of the customer, or delivered electronically through the customer" and "professional services." For each category, the Rhode Island regulation establishes a separate set of cascading rules that must be followed to source the revenue for that category to the state.

The regulation provides guidance on the sourcing of revenues from mixed groups with members that use special industry apportionment (but are still subject to Rhode Island's general corporate income tax), essentially providing that members using a special industry apportionment method (such as those used by motor carriers or mutual fund service providers) will continue to apportion their receipts using that method as part of the combined group's income while other corporations in the group will be required to use either the general rules or the industry rule applicable to them. The regulation also asserts that banks and insurance companies generally cannot be included in a combined group return.

The regulation provides little guidance on the treatment of income from a pass-through entity (PTE). When a corporation is a partner/member or shareholder in a PTE, the regulation deems the business conducted by the PTE to be the business of the corporation to the extent of the corporation's distributive share. Such distributive share is included in income and is apportioned consistent with the decision reached by the Rhode Island Supreme Court in *Homart Dev. v. Norberg*, 529 A.2d 115 (RI 1987) – which held that a taxpayer should use an aggregate or unitary method for apportioning income from partnership investments.

Unlike Massachusetts regulation, the Rhode Island regulations do not provide for the exclusion of gains from some sales of partnership interests, and all gains are generally included in the Rhode Island sales factor.

Ernst & Young LLP's insights

As stated above, the Rhode Island regulation substantially follows the approach taken in Massachusetts, with some key differences, including the following: (1) fewer rules of exclusion from the sales factor (such as for gains from sales of partnership interests); (2) provision of fewer explanatory examples; and (3) no "throw-out" rule for sales other non-tangible property (e.g., intangibles, services) made to states where the taxpayer is not taxable.

In addition, the Division's citation to *Homart* is interesting for a few reasons. First, it seems to suggest that aggregate or unitary treatment of a corporation's pro rata share of partnership apportionment factors is mandatory regardless of whether the taxpayer is in fact unitary with the underlying investment. The Division does not appear to allow for nonbusiness or non-unitary treatment of partnership income such as by separate accounting or allocation. Second, application of the *Homart* decision is pretty narrow and does not specifically address whether the taxpayer and its partnerships are unitary, but does hold that aggregate or unitary apportionment treatment is indicated under the facts at issue in that case. Third, Rhode Island law has long treated all income earned directly as apportionable business income (which the regulation reiterates) and nominally does not allow for nonbusiness income (US constitutional requirements to the contrary apparently notwithstanding). However, as stated in *Homart*, the Division has not always allowed corporate partners to include their prorata share of partnership apportionment factors based on a separate entity apportionment theory.

California Supreme Court holds that taxpayers are not allowed to use the Multistate Tax Compact election

In in *Gillette Co.*,[1] the California Supreme Court (the Court) reversed the Court of Appeal decision and held that corporate taxpayers cannot elect to use the equally weighted three-factor apportionment formula under the Multistate Tax Compact (Compact) for reporting income to California in lieu of the statutorily mandated formula (e.g., double-weighted sales or single sales factor formulae). The Court agreed with the Franchise Tax Board (FTB) that the Legislature's enactment of the new apportionment formula controls and, thus, the state was not bound by the Compact election.

Specifically, the Court found that (1) the Compact is not a binding contract among the states; (2) the Compact does not satisfy any of the indicia of a binding interstate compact as stated in the US Supreme Court's (USSC) ruling in *Northeast Bancorp*[2] (e.g., the Compact did not create reciprocal obligations among member states, it did not prohibit unilateral state action, the Multistate Tax Commission lacks binding authority over the member states and as such it is not a joint regulatory organization); (3) the Legislature's amendment of the apportionment provisions intended to eliminate the Compact apportionment election did not violate the reenactment clause of the California Constitution; and (4) by stating that "Notwithstanding Section 38006 [i.e., the Compact], all business income shall be apportioned to this state by" using the formula it sets out, the Legislature unambiguously intended the state-mandated formula supersede the Compact election provision. The Court noted that "there is no credible argument that the Legislature intended to retain the Compact's election provision."

Ernst & Young LLP's insights

We expect several of the taxpayers who are party to this litigation will appeal the Court's ruling to the USSC. If so, the litigation continues and will not conclude until the USSC acts on the matter. This process could take months or years, depending on whether the USSC denies or grants certiorari. Even if the USSC grants certiorari to the taxpayers in *Gillette* or any one of the companion cases in other states, the Court's decision will stand for California tax purposes until reversed by the USSC. The validity of *Gillette* could impact (1) a taxpayer's filing position for California tax returns filed after 31 December 2015 for purposes of the Large Corporate Understatement Penalty, (2) financial statement provisions or FIN 48 disclosure, or (3) the need to file amended returns for prior years.

Pennsylvania court finds that statutory cap on net loss carry-overs violates state Constitution's Uniformity Clause

Pennsylvania imposes a corporate net income tax (CNIT) at a flat rate of 9.99%, but permits a taxpayer to reduce its positive taxable income by deducting prior-year net loss carry-overs (NLCs), subject to certain statutory limitations. For the 2007 tax year, the NLC deduction was limited to the greater of 12.5% of the taxpayer's taxable income or $3 million. The Pennsylvania Constitution's Uniformity Clause, however, requires that all taxes must be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax.

In *Nextel Comm. of the Mid-Atlantic, Inc.*,[3] Pennsylvania's Commonwealth Court held that the statutory cap on NLCs violates the Pennsylvania Constitution's Uniformity Clause. The Court found that the statute imposing the cap creates classes of taxpayers according to their taxable income, and classifications based solely on asset value are unjust, arbitrary and illegal. The Court made its determination on an "as-applied" basis (i.e., applicable only to that taxpayer) and granted Nextel a refund of all of the CNIT it paid for 2007.

Ernst & Young LLP's insights

The Commonwealth is appealing this decision. If the decision is ultimately upheld, the ramifications of this case have the potential to be "far-reaching." Moreover, the Court seemingly invited the General Assembly to take action by stating that, to "the extent our decision in this as-applied challenge calls into question the validity of the NLC deduction provision in any other or even every other context, the General Assembly should be guided accordingly."

Pennsylvania CNIT taxpayers that have been prevented from utilizing their NLCs due to the dollar or percentage cap should review their positions to determine whether they should file refund claims consistent with the Court's ruling in Nextel. The general statute of limitations for 2012 calendar-year taxpayers runs out on 15 April 2016.

Other noteworthy developments

Legislative

District of Columbia: On 22 October 2015, L21-0036 became law. Key provisions of L21-0036 make clear that the market-based sourcing provisions enacted in 2014 are effective for tax years beginning after 31 December 2014, and accelerate the corporate income tax and unincorporated business tax rate reductions by one year if certain revenue targets are met. In October 2015, the District of Columbia Office of the Budget Director certified that revenue thresholds had been met and, effective for tax year 2016, the incorporated and unincorporated business franchise tax will be reduced to 9.2% (from 9.4%).

On 23 November 2015, the Mayor signed emergency legislation (B21-0472) that repeals the blacklist of tax haven jurisdictions for combined reporting purposes recently enacted as part of the District's FY2016 budget (L21-0036). Despite the pending elimination of the tax haven blacklist, the District's combined reporting provisions still require that taxpayer members take into account the income and apportionment factors of any member that is doing business in a tax haven and retains a statutory definition of "tax haven." B21-0472 will expire on 21 February 2016. A permanent measure still has to go through the full legislative process.

Judicial

Indiana: In *Columbia Sportswear*,[4] the Indiana Tax Court held that the Indiana Department of Revenue's (INDOR) adjustments to a multistate corporate retailer's Indiana net income were improper because neither the state's alternative apportionment provision (Ind. Code Section 6-3-2-2(l)(4)) nor the state's 482-type adjustment provisions (Ind. Code Section 6-3-2-2(m)) authorized the INDOR to increase the retailer's net income tax base for purposes of assessing Indiana adjusted gross income. In disallowing the INDOR's attempted use of the alternative apportionment provisions, the Court explained that the effect of the INDOR's audit adjustment was to increase the retailer's net income tax base by approximately $100 million for each year at issue and not to divide the retailer's tax base differently than what it had done under the state's standard sourcing rule. Indiana's alternative apportionment rule allows the INDOR to use a reasonable alternative method to the standard sourcing rules only for dividing the tax base. Here, the INDOR attempted to use these provisions to adjust the net income tax base. The Court also held that the INDOR could not rely on the state's "482-type" provisions to adjust the tax base because it failed to show that the standard sourcing rules did not fairly represent the retailer's Indiana source income. Rather, the evidence established that the intercompany transactions were conducted at arm's length rates and, therefore, the standard sourcing rules fairly reflected the retailer's Indiana source income. Lastly, the Court found that even if the application of the standard sourcing rules did not fairly reflect the retailer's Indiana source income, the INDOR's adjustments, which would have attributed nearly all of the consolidated group's gross income to the retailer without adjusting the retailer's apportionment percentage, also was improper because the adjustments were unreasonable.

Kentucky: In *World Acceptance Corporation*,[5] the Franklin Circuit Court (Court) reversed itself, and in doing so, it affirmed the Kentucky Board of Tax Appeals' decision (Order K-24682) upholding the Department of Revenue's (DOR) position that a common parent corporation must meet the definition of an includible corporation as provided by KRS §141.200(9)(e) to be included in a Kentucky nexus consolidated group return. Certain entities, however, are excluded from the consolidated group return (e.g., foreign corporations; real estate investment trusts; regulated investment companies; domestic international sales corporations). The Court's ruling also has procedural implications for DOR letter rulings. The Court's analysis indicates that anonymous letter rulings from the DOR have no legal standing if: (a) the facts materially differ in the letter ruling submitted by the taxpayer as compared to any subsequent filings based on that letter ruling; or (b) the DOR "misapplies the applicable statutes and regulations to the facts submitted to [the DOR] by the taxpayer."

Maryland: A Maryland circuit court upheld the tax court's ruling in *Conagra Brands, Inc.*[6] that an out-of-state intangible holding company (holding company) with no presence in the state has nexus with Maryland because it lacked economic substance separate from its parent, which does business in Maryland. The circuit court also upheld the Comptroller of Treasury's use of a blended apportionment factor, which was derived from the income tax returns of the holding company's related entities filing in Maryland, to allocate the company's income to the state. Lastly, the circuit court reversed the tax court's waiver of interest.

Massachusetts: The USSC granted certiorari in *The First Marblehead Corp.*[7] but immediately vacated the judgment and remanded the case to the Massachusetts Supreme Judicial Court (SJC) for further consideration in light of its 2015 ruling in *Comptroller of the Treasury of Maryland* *v. Wynne*.[8] In *Wynne*, the USSC addressed discriminatory state taxation under the Commerce Clause, focusing on the application of the "internal consistency" test. In *First Marblehead*, the SJC ruled that the Commissioner of Revenue properly treated the loans of an out-of-state "holding" company as being located wholly in Massachusetts and, therefore, included in the numerator of its property factor. The SJC did so, because the company failed to rebut the presumption that the loans should be sourced to its commercial domicile, which was Massachusetts.

Michigan: In *Ashley Capital, LLC*,[9] the Michigan Court of Appeals (MCA) ruled in favor of the taxpayer regarding the order in which credits may be applied against tax liability under the since-repealed Michigan Business Tax Act (BTA). The BTA provides that the compensation credit and investment tax credit shall be taken before any other credit under this act. Contrary to the BTA's guidance, however, the Michigan Department of Treasury created a form requiring taxpayers to utilize the unused carryforward credit and brownfield rehabilitation credit, which were available under the since-repealed Single Business Tax Act and were carried forward to the BTA, before taking the compensation credit and investment tax credit. When the taxpayer prepared its initial return, it used the guidance as present in the BTA. The MCA agreed with this position, concluding that MCL 208.1403(1) showed a legislative intent to "create a 'super' priority for compensation credits and investment tax credits."

New Jersey: The New Jersey Superior Court, Appellate Division, affirmed the New Jersey Tax Court's ruling in *Lorillard Licensing Co.*, regarding the appropriate standard the New Jersey Division of Taxation must use when applying the since repealed throw-out rule in determining a multistate company's receipts for Corporate Business Tax apportionment purposes. Under *Whirlpool*, the state's throw-out rule is facially constitutional when applied to receipts from states lacking jurisdiction to impose tax either due to insufficient nexus or because of the protections afforded under PL 86-272, but not when applied to receipts from states that opt to not impose an income (or similar) tax. Thus, the Division may "throw out" of the denominator of the receipts fraction only that income which is realized by the taxpayer from states which lack jurisdiction to tax it. The court also rejected the Division's application of different standards for determining whether a taxpayer "is subject to tax" for purposes of nexus and for purposes of throw-out. Under the nexus principles articulated in *Lanco*, the taxpayer in this case is subject to tax in every state by virtue of an affiliate's sale of products using the taxpayer's trademarks and trade names in those jurisdictions. Therefore, since for New Jersey tax purposes the taxpayer was subject to tax in every other state, the taxpayer did not have any receipts that could be thrown out under the throw-out rule.[10]

Oregon: In reversing the state tax court, the Oregon Supreme Court (Court) held that the state's three-year statute of limitations did not apply to the recalculation of NOLs by the Oregon Department of Revenue (Department) from a closed tax year when the taxpayers carried forward the NOLs and used them on an open tax year's return. The Court reasoned that the statute of limitations prevents only the assessment of a deficiency and does not preclude the Department from determining the correct amount of tax due for an open tax year.[11]

Vermont: The Vermont Supreme Court in *AIG Management Services Inc.*,[12] ruled that an insurance management company that is part of a unitary business group consisting primarily of insurance and financial companies is not required to include a wholly owned entity doing business as a ski resort in the group's Vermont combined return because a unitary relationship did not exist. The Court found that even though the company had sole ownership of the ski resort and had the ability to direct the ski resort's operations given its power to appoint the ski resort's board and its exclusive role of providing financing to the resort, evidence did not support a linkage of economic realities between the group and the ski resort. The Court also rejected the Department of Taxes' argument that a unitary operation should be assumed in this case because the group included the ski resort in its unitary combined reporting group in its 2006 tax returns filed in 15 other states that use the combined reporting filing method. The Court noted that while an entity's representation in other states can be a factor, it cannot create a unitary operation where it does not otherwise exist.

Administrative

California: In the December 2015 issue of *Taxnews*, the FTB has adjusted the bright-line "doing business in California" brackets to reflect changes in the California Consumer Price Index. The adjusted threshold values for taxable years beginning on and after 1 January 2015 are as follows:

(1) taxpayer's in-state sales that exceed the lesser of $536,446 or 25% of the taxpayer's total sales; (2) taxpayer's real and tangible personal property in California exceeds the lesser of $53,644 or 25% of the taxpayer's total real and tangible personal property; and (3) taxpayer's in-state compensation exceeds the lesser of $53,644 or 25% of the total compensation paid by the taxpayer.

In *Craigslist*,[13] the State Board of Equalization (SBOE) held that for purposes of determining whether an online classified ad forum company is taxable in another state for purposes of applying the throw-out rule, it must use the nexus rules in effect for the tax year at issue (2007) – in this case, a physical presence standard, and not the factor presence nexus standard that took effect in 2011. The SBOE reasoned that "[w]hile an increasing number of state court cases have found that a physical presence is not necessary, the United States Supreme Court has not so held, and there is no Board decision or California court decision finding that nexus to impose an income tax may be established without a physical presence." Moreover, the SBOE held that if it found physical presence was not required during 2007, such finding "would establish a new rule of law in an unsettled area."

In Technical Advice Memorandum 2015-02 (22 December 2015), the FTB advised that when reducing California tax attributes pursuant for excluded cancellation of indebtedness income under IRC Section 108 as adopted by California, post-apportioned cancellation-of-debt income is applied.

Idaho: In a press release issued 17 December 2015, the Idaho State Tax Commission announced that it will follow de minimis safe harbor threshold under the final repair regulations issued by the Internal Revenue Service (Treas. Reg. 1-263(a)-1(f)) in Notice 2015-82.

Illinois: A new regulation (86 Ill. Admin. Code 100.3450), which was adopted and took effect on 18 November 2015, clarifies how Illinois apportions business income of transportation companies.

In *Innophos Holdings Inc.*,[14] the Illinois Independent Tax Tribunal held a specialty phosphates manufacturer is required to include throwback sales in its sales factor numerator for the 2009 and 2010 tax years because the addition of throwback sales is automatic under the state's normal apportionment statute (35 ILCS 5/304(a)(3)(B)(ii)) and nothing in a 2013 amendment to an alternative apportionment statute (35 ILCS 5/304(f)) changed that requirement.

Massachusetts: The Massachusetts Department of Revenue issued Directive 15-3 (1 October 2015) that explains and clarifies the extent to which expensing (IRC Section 179), depreciation (IRC Section 167) and bonus depreciation (IRC Section 168(k)) deductions affect the basis upon which the investment tax credit and the economic development incentive credits are calculated. The directive includes examples of the application of these provisions.

Michigan: The Michigan Department of Treasury issued Rev. Admin. Bulletin 2015-20 (16 October 2015), which discusses where the benefit of services is received for purposes of sourcing sales under the Corporate Income Tax (CIT) Act. This bulletin does not address sourcing of other types of sales under the CIT.

Minnesota: In December 2015, the Department of Revenue announced adjustments to the corporation franchise tax minimum fee for 2016. The minimum fee ranges from $0 if the taxpayer's total Minnesota property, payroll and sales is less than $970,000; up to $9,690 if the taxpayer's total Minnesota property, payroll and sales is $38,770,000 or more.

Nebraska: On 22 December 2015, the Governor approved a number of regulations related to apportionment (Reg-24-301 et seq.), resulting from the state moving to market based-sourcing starting in 2014. The regulations provide guidance on various topics, including the sales factor of business entities as owners in a partnership or joint venture; sales factor sourcing for tangible personal property and non-tangible personal property (e.g., services, intangible property, selling or leasing real property, leasing tangible personal property, sales not specifically addressed) in Nebraska; special apportionment rules for airlines, pipeline companies, trucking companies, insurance companies; property and payroll factor issues; and alternative apportionment. The regulations became effective 27 December 2015.

New York: The New York Department of Taxation and Finance issued TSB-M-15(8)C, (7)i (issued 31 December 2015) on the direct and indirect attribution of interest deductions for Art. 9-A (corporate franchise) taxpayers. The memorandum contains new definitions of "investment capital," "investment income" and "other exempt income"; sets forth the required methodology for the attribution of interest deductions; and explains the safe harbor election. The Department noted that this guidance does not cover the attribution of liabilities in computing the tax on business capital as this is addressed in the applicable tax return instructions. The memorandum is effective for tax years beginning on or after 1 January 2015, and it supersedes TSB-M-88(5)C and TSB-M-95(2)C for those years.

On 31 December 2015 the New York State Commissioner of Taxation and Finance signed an emergency regulation changing the Metropolitan Transportation Business Tax (MTA) surcharge rate. For taxable years beginning on or after 1 January 2016 and before 1 January 2017, the surcharge is to be computed at the rate of 28% (up from 25.6% for tax years beginning on or after 1 January 2015 and before 1 January 2016).

New York City: In *McGraw-Hill Companies, Inc.,*[15] the New York City Tax Appeals Tribunal held that a credit rating agency is not allowed to source its receipts from generating credit ratings using the special allocation method that applies to publishers and broadcasters (the place-of-audience method) instead of the standard allocation method (the place-of-performance method) under New York City's general corporation tax. In reaching this conclusion, the Tribunal reasoned that the place-of-audience method is only available for certain types of receipts, such as those from the sale of subscriptions, advertising and program broadcasting, and that these types of receipts are nothing like the receipts the agency receives from customers for the service of assigning credit ratings.

Developments to watch

District of Columbia: On 29 December 2015, the District of Columbia's Mayor approved a temporary bill (B21-0396) that repeals the blacklist of tax haven jurisdictions enacted as part of the District's FY2016 budget (L21-0036). It is important to note the District's combined reporting provisions still require taxpayer members take into account the income and apportionment factors of any member that is doing business in a tax haven and retains a statutory definition of "tax haven." B21-0396 must now go through a mandatory Congressional review period of 30 in-session days. Once approved, B21-0396 will be effective for 225 days. A permanent measure still must be enacted.

New Jersey: A proposed bill (A. 3624), as approved by the Assembly on 3 December 2015, would prohibit the award of state contracts and development subsidies to inverted domestic corporations. In addition, if a recipient corporation of a development subsidy becomes an inverted domestic corporation during the term of a development subsidy, the recipient corporation would have to pay back the total value of the development subsidy.

New York: The New York State Department of Taxation and Finance issued draft corporate franchise tax regulations (N.Y. Comp. Codes R. & Regs. tit. 20, Sections 4-4.6 and 4-4.9) addressing the sourcing of receipts from "other services and other business activities" and "sales of digital products" for receipts factor apportionment purposes. These draft proposed regulations each address the receipts factor sourcing rules' hierarchy and provide examples as to the application of each rule in the hierarchy. In addition to discussing the hierarchies, each draft proposed regulation provides standards as to the due diligence required to be exercised before a taxpayer may move from one rule in the hierarchy to the next. The regulation also provides, under the "benefits received" and the "primary use location" rules, a "reasonable approximation" standard that taxpayers could use as an alternative sourcing method in certain limited circumstances. Lastly, the draft proposed regulations describe how taxpayers and/or the Department can overcome various presumptions, offer guidance as to how to source commingled receipts, define certain key terms, and provide an "intermediary transaction" rule including examples of how to source receipts when the taxpayer is not the one to whom the ultimate sale and benefit is received.

Oregon: The Oregon Supreme Court has been asked to review the Oregon Tax Court's ruling that a multistate corporation was not entitled to a refund of corporate excise tax based on making an election to use the Multistate Tax Compact's equally weighted three-factor apportionment formula because the state's enactment of a statute that requires taxpayers to use a single sales factor apportionment formula by "disabling" the Compact election was valid.[16]

Proposed amendments to Rule 150-317.705(3)(a) would reduce the level of common ownership needed to establish a unitary relationship with an entity that is incorporated in a tax haven. The new common ownership threshold would be 50% (currently 80%). If approved, this rule change would apply to tax years beginning on or after 1 January 2016.

Rhode Island: Proposed regulation CT 15-15, once approved, will provide guidance on Rhode Island's new combined reporting provisions that took effect 1 January 2015.

Texas: On 9 December 2015, the Texas Supreme Court heard arguments in *Hallmark Marketing*, to determine whether the appellate court properly upheld the Comptroller of Public Accounts calculation of a greeting card company's everywhere receipts by subtracting from gross receipts the company's losses generated from the sale of investments and capital assets.[17]

Recap of Q1–Q3 2015

Multistate Tax Compact apportionment election cases developments (Q3)

Alabama enacts factor presence nexus standard (Q3)

California advances IRC conformity date (Q3)

Connecticut budget bill contains significant corporate income tax changes (Q2)

District of Columbia enacts rate changes, single sales factor apportionment with market-based sourcing (Q1)

Louisiana law changes significantly affect corporate tax filers (Q2)

Massachusetts Department of Revenue adopts market-based sourcing regulations (Q1)

New York ruling provides guidance on sourcing online travel reservation facilitation and advertising receipts (Q1)

New York law amends 2014 corporate tax reform, conforms New York City's corporate tax code to state law (Q2)

North Carolina law modifies the corporate income and franchise taxes (Q3)

Tennessee expands nexus provisions, adopts triple-weighted sales factor and market-based sourcing (Q2)

Endnotes

1–*The Gillette Co. v. Franchise Tax Board*, No. S206587 (Cal. S. Ct. 31 December 2015).

2–*Northeast Bancorp v. Board of Governors*, FRS, 472 U.S. 159 (1985).

3–*Nextel Comm. of the Mid-Atlantic, Inc. v. Pennsylvania*, No. 98 F.R. 2012 (Pa. Cmnwlth. Ct. 23 November 2015).

4–*Columbia Sportswear USA Corp. v. Indiana Dept. of Revenue*, No. 49T10-1104-TA-00032 (Ind. Tax Ct. 18 December 2015).

5–*World Acceptance Corp. and World Finance Corp. of Kentucky v. Cmnwlth. of Kentucky*, Civ. Action No. 14-CI-01193 (Ky. Cmnwlth. Ct., Franklin Cir. Ct. Div. II, 10 November 2015).

6–*Conagra Brands, Inc. v. Comptroller of Treasury*, No. C-02-CV-15-993 (Md. Cir. Ct., Anne Arundel Cnty., 19 October 2015).

7–*The First Marblehead Corp. v. Commissioner of Revenue*, 470 Mass. 497 (2015), *cert. granted, judgment vacated and case remanded*, Dkt. No. 14-1422 (U.S. Sup. Ct. 13 October 2015).

8–*Comptroller of the Treasury of Maryland v. Wynne*, Dkt. No. 13-485 (18 May 2015).

9–*Ashley Capital, LLC v. Dept. of Treasury*, Dkt. No. 322386 (Mich. Ct. App. 10 November 2015) (unpublished).

10–*Lorillard Licensing Co. LLC v. Director, Div. of Taxation*, No. A-2033-13T1 (N.J. Super. Ct., App. Div., 4 December 2015) (unpublished).

11–*Hillenga v. Or. Dept. of Revenue*, No. SC S062603 (Or. S.Ct. 13 November 2015).

12–*AIG Insurance Management Services Inc. v. Dept. of Taxes*, No. 2015 VT 137 (Vt. Sup. Ct. 20 November 2015).

13–*Matter of Craigslist Inc.*, Nos. 725838 and 843070 (Cal. St. Bd. of Equal. 16 December 2015).

14–*Innophos Holdings Inc. v. Illinois Dept. of Revenue*, No. 14 TT 214, (Ill. Tax Tribunal 17 November 2015).

15–*In the Matter of the McGraw-Hill Companies, Inc.*, Dkt. No. TAT(E)10-19(GC) et al. (N.Y.C. Tax App. Trib. 28 October 2015).

16–*Health Net Inc. v. Ore. Dept. of Revenue*, No. TC 5127 (Ore. Tax Ct. 9 September 2015), appeal filed 26 October 2015.

17–*Hallmark Marketing Co. LLC v. Combs*, No. 13-14-00093-CV (Tex. Ct. App 13 November 2014), review granted, Dkt. No. 14-1075 (Tex. Sup. Ct.).

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ED None